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**MAY 10 2004**

**DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600**

ARRIS INTERNATIONAL, INC  
3871 LAKEFIELD DRIVE  
SUWANEE GA 30024

In re Application of: :  
Thomas J. Cloonan :  
Application No. 09/620,821 :  
Filed: July 21, 2000 :  
For: CONGESTION CONTROL IN A NETWORK :  
DEVICE HAVING A BUFFER CIRCUIT :

ON PETITION

This is a decision on the petition filed October 31, 2002, to withdraw the holding of abandonment. The petition is being treated pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The Notice of Abandonment was mailed October 1, 2002 for failure to file a proper reply to the Final Office action mailed on March 18, 2002.

Petitioner alleges to have timely filed an After Final amendment via facsimile on April 29, 2002.

In support thereof, a copy of the fax receipt generated by the PTO, which serves as evidence of timely receipt by the PTO, is included with the petition. Furthermore, the response bears a proper certificate of mailing with a deposit date of April 29, 2002 in compliance with the requirements of 37 CFR 1.8(a)(1). Therefore, it is concluded that the papers were timely filed in the Patent and Trademark Office but not matched with the application file.

**DECISION ON SUFFICIENCY OF RESPONSE**

MPEP § 714.13 [R-1] Amendments After Final Rejection or Action, Procedure  
Followed, states in part:

**FINAL REJECTION — TIME FOR REPLY**

If an applicant initially replies within 2 months from the date of mailing of any final rejection setting a 3-month shortened statutory period for reply and the Office does not mail an advisory action until after the end of the 3-month shortened statutory period, the period for reply for purposes of determining the amount of any extension fee will be the date on which the Office mails the advisory action advising applicant of the status of the application, but in no event can the period extend beyond 6 months from the date of the final rejection...

ENTRY NOT A MATTER OF RIGHT

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 CFR 1.116) or reinstate previously canceled claims. Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116(c) is expected in all amendments after final rejection. Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

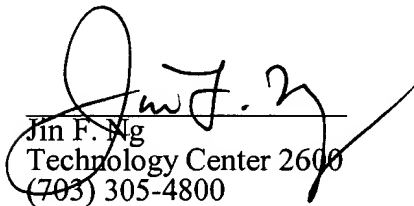
- (A) an amendment complying with 37 CFR 1.116;
- (B) a Notice of Appeal (and appeal fee); or
- (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e). RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 and design applications.

If no appeal has been filed within the period for reply and no amendment has been submitted to make the application allowable or which can be entered in part (see MPEP § 714.20), the application stands abandoned. [emphasis added]

Petitioner successfully demonstrated that a reply was timely filed to the outstanding Final Office action as discussed supra. However, as set forth in MPEP §714.13 above, although the submission was deemed to be timely filed, entry is not a matter of right. The response was forwarded to the examiner for consideration. The examiner has determined as per the attached Advisory Action, that the After Final submission did not place the application in condition for allowance. Given that the submission did not properly comply with the requirements of 37 C.F.R § 1.113, the application remains abandoned.

Accordingly, the petition is **DENIED.**

The application is being forwarded to the file repository. Applicants may wish to consider filing of a petition under 37 C.F.R §1.137(b) if they wish to revive the application.

  
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Attachment: Advisory Action